

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
JOHN E. ANDRUS MEMORIAL, INC. (d/b/a	:
ANDRUS ON HUDSON),	:
	:
Plaintiff	:
	:
-against-	:
	:
RICHARD F. DAINES, as Commissioner of the	:
New York State Department of Health,	:
	:
Defendant.	:
-----X	

07-CV-3432 (CLB) (KNF)

**DEFENDANT'S RESPONSES
AND OBJECTIONS TO
PLAINTIFF'S FIRST
REQUEST FOR PRODUCTION
OF DOCUMENTS AND
INTERROGATORIES**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and Rules 26.2, 26.3 and 34.1 of the Local Rules of the United States District Court, for the Eastern and Southern Districts of New York (the "Local Rules"), defendant Richard F. Daines, as Commissioner of the New York State Department of Health, ("Defendant"), by his attorney, Andrew M. Cuomo, Attorney General of the State of New York, hereby responds to Plaintiff's First Request For Production Of Documents and Interrogatories ("Requests") as follows:

GENERAL RESPONSES AND OBJECTIONS

The following General Responses and Objections are incorporated into each specific response and objection as if fully set forth therein:

1. Defendant objects to the Requests to the extent they seek documents beyond the scope of discovery permitted under Fed. R. Civ. P. Rule 26(b)(1).
2. Defendant has produced certain documents believed to be responsive to the Requests and will produce other documents, should they be located.
3. Defendant objects to each item of the Requests to the extent that it purports to call for the production of documents that: constitute attorney-work product; were prepared in

anticipation of or in connection with litigation; disclose the mental impressions, conclusions, opinions or legal theories of any attorneys for Defendant or for persons having a common interest with Defendant; contain privileged attorney-client communications; are otherwise protected from disclosure under applicable privileges, laws, rules, regulations or agreements including the deliberative/executive privilege; or are documents that Defendant is precluded by law or court order from disclosing. Defendant will not produce any such documents (hereinafter "Privileged Documents"). The inadvertent production of Privileged Documents is not intended, and shall not be deemed, to waive or abridge any applicable privilege. Given the scope of discovery in this action, Defendant reserves the right to assert any applicable privilege when documents are reviewed. In accordance with Local Rule 26.2, Defendant will prepare logs identifying Privileged Documents, which Defendant will supply as soon as practicable following the conclusion of his document collection efforts.

4. Defendant objects to each item of the Requests to the extent that it calls for the production of documents that contain confidential information, the disclosure of which would or could adversely affect Defendant or a third party or contains information subject to the privacy rights of other persons ("Confidential Material").

5. Defendants object to the Requests' Instructions to the extent they seek additional information concerning privileged documents not required under Local Rule 26.2.

6. Defendants object to Instructions to the extent that they seek to require Defendant to provide any information concerning documents not in his possession, custody or control as of the date the Requests were received.

7. Defendant objects to each item of the Requests to the extent that it purports to call for the production of documents not within Defendants' possession, custody or control.

8. The production of any document, when the production of such document is objected to herein, shall not constitute a waiver of any applicable objection and is without prejudice to any of Defendant's rights to object later that the production of any such document was inadvertent.

9. The fact that Defendant has responded to a particular request shall not be interpreted as implying either that responsive documents exist or that Defendant acknowledges the propriety of that request. Defendant's production of any documents shall not be construed as an admission of the relevance, materiality, or admissibility of any such documents or of the subject matter of any such documents, or as a waiver or abridgement of any applicable privilege or of any applicable objection set forth above or below. Defendant submits these responses without conceding the relevancy, materiality or admissibility of the subject matter of any document requested by the Requests, and Defendant reserves the right:

- a. to supplement, amend or correct all or any part of his responses; and
- b. to object to the admissibility in evidence of any part of the documents produced in response to the Requests or of any information contained in any such document.

10. Defendant objects ~~generally to the Requests to the extent that they seek to impose~~ any other burdens and obligations exceeding those imposed by the Federal Rules of Civil Procedure, the Local Rules or otherwise by law.

**SPECIFIC RESPONSES AND OBJECTIONS
TO PLAINTIFF'S DOCUMENT REQUESTS**

Hudson Valley Regional Advisory Committee ("RAC")

Document Request No. 1:

All prior drafts of a report of the Hudson Valley Regional Advisory Committee ("RAC") entitled "Final Report Submitted to the Commission on Health Care Facilities in the Twenty-First Century" ("RAC Report") dated November 15, 2006.

Response No. 1:

Defendant has searched for documents responsive to this request and, upon information and belief, some of the documents located may be responsive to this request. This response is based on information and belief because defendant was not a member of the RAC and the RAC was disbanded on or before December 31, 2006, and none of the RAC members are or were part of the New York State Department of Health.

Subject to the above, Defendant objects to the production of any documents responsive to this request pursuant to executive/deliberative privilege. A privilege log identifying any such documents will be provided.

Document Request No. 2:

Any data that any member or staff of the RAC reviewed in making the recommendations contained in the RAC Report concerning the Andrus.

Response No. 2:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Non-privileged documents located by the Defendant that were

available to members of the RAC have been or will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the RAC Report concerning the Andrus.

Document Request No. 3:

Any data used by the RAC to compare the Andrus with any other nursing facility in the Hudson Valley Region, as defined by Section 31 of Part E of Chapter 63 of the New York Laws of 2005, § 7 ("Hudson Valley facility" or "Hudson Valley facilities").

Response No. 3:

Non-privileged documents located by Defendant which Defendant has reason to believe were available to members of the RAC have been or will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the RAC Report concerning the Andrus.

Document Request No. 4:

Any data collected by or submitted to the RAC by or on behalf of or otherwise concerning the Andrus or other Hudson Valley facilities.

Response No. 4:

Non-privileged documents located by Defendant which Defendant has reason to believe were available to members of the RAC will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the RAC Report concerning the Andrus.

Document Request No. 5:

Any summaries, charts, memoranda, graphs, tables or other documents analyzing or otherwise concerning the data responsive to Request Nos. 2, 3 and 4 above.

Response No. 5:

Non-privileged documents located by Defendant which Defendant has reason to believe were available to members of the RAC will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the RAC Report concerning the Andrus.

Document Request No. 6:

All other documents prepared by any member or staff of the RAC concerning the Andrus.

Response No. 6:

Defendant has no knowledge of any documents in addition to those produced in response to other document requests.

Document Request No. 7:

Any notes, minutes, memoranda or other documents concerning meetings or discussions of members or staff of the RAC concerning the Andrus or any other Hudson Valley facility.

Response No. 7:

Non-privileged documents located by Defendant which may be responsive to this request have been or will be produced. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

Document Request No. 8:

Any notes, minutes, memoranda or other documents concerning any communication between any member or staff of the RAC and any representative of the Andrus.

Response No. 8:

Non-privileged documents located by Defendant which may be responsive to this request have been or will be produced. See, e.g., the document Bates numbered AND 1350. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

Document Request No. 9:

Any notes, minutes, memoranda or other documents concerning any communication between any member or staff of the RAC and any member or staff of the Berger Commission concerning the Andrus or any other Hudson Valley facility.

Response No. 9:

Non-privileged documents located by Defendant which may be responsive to this request have been or will be produced. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

Berger Commission

Document Request No. 10:

All prior drafts of the report of the Commission on Health Care Facilities in the Twenty-First Century (the "Berger Commission") entitled "A Plan to Stabilize and Strengthen New York's Health Care System" (the "Commission Report") dated December 2006 insofar as any such drafts concern the Preface to Recommendations (Section VII.), the Andrus or any other Hudson Valley facility.

Response No. 10:

Defendant will not produce documents responsive to this request pursuant to executive deliberative privilege. A privilege log identifying any such documents will be provided.

Document Request No. 11:

Any data that any member or staff of the Berger Commission reviewed in making the recommendations contained in the Commission Report concerning the Andrus.

Response No. 11:

Documents which Defendant has located and has reason to believe were available to members and staff of the Berger Commission have been or will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the Commission Report concerning the Andrus.

Document Request No. 12:

Any data used by the Berger Commission to compare the Andrus with any other Hudson Valley facility.

Response No. 12:

Documents which Defendant has located and has reason to believe were available to members and staff of the Berger Commission have been or will be produced. Defendant has no knowledge which of these documents were actually reviewed in making the recommendations contained in the Commission Report concerning the Andrus.

Document Request No. 13:

Any data collected by or submitted to the Berger Commission by or on behalf of or otherwise concerning the Andrus or other Hudson Valley facility.

Response No. 13:

Documents which Defendant has located and has reason to believe were available to members and staff of the Berger Commission have been or will be produced. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

Document Request No. 14:

Any summaries, charts, memoranda, graphs, tables or other documents analyzing or otherwise concerning the data responsive to Request Nos. 11, 12 and 13 above.

Response No. 14:

Documents located by Defendant which Defendant has reason to believe were available to members and staff of the Berger Commission have been or will be produced. Defendant has no knowledge which of these documents were actually reviewed by staff of the Berger Commission.

Document Request No. 15:

All other documents prepared by any member or staff of the Berger Commission concerning the Andrus.

Response No. 15:

Documents concerning the Andrus located by Defendant which were prepared by members and staff of the Berger Commission will be produced to the extent they are not withheld due to executive deliberative privilege.

Document Request No. 16:

Any notes, minutes, memoranda or other documents concerning meetings or discussions of members or staff of the Berger

Commission concerning the Andrus or any other Hudson Valley facility.

Response No. 16:

Defendant will not produce documents responsive to this request pursuant to executive deliberative privilege.

Document Request No. 17:

Any notes, minutes, memoranda or other documents concerning any communication between any member or staff of the Berger Commission and any representative of the Andrus.

Response No. 17:

Documents located by Defendant which may be responsive to this request have been or will be produced. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

Document Request No. 18:

Any notes, minutes, memoranda or other documents concerning any communication between any member or staff of the Berger Commission and any member or staff of the RAC concerning the Andrus or any other Hudson Valley facility.

Response No. 18:

Non-privileged documents located by Defendant which may be responsive to this request have been or will be produced. Defendant reserves the right to object to the production of any responsive documents pursuant to executive deliberative privilege, if applicable.

**SPECIFIC RESPONSES AND OBJECTIONS
TO PLAINTIFF'S INTERROGATORIES**

RAC Witnesses

Interrogatory No. 1:

Identify all staff or members of the RAC responsible for collecting data or investigating the facts concerning the Andrus and other Hudson Valley facilities.

Response to Interrogatory No. 1:

The members of the RAC were Dr. Robert Amler, Charles Bell, William Florence, David Freed, Peter Hamilton, Kenneth Herman, Dr. Linda Landesman, Michael Pascale and Dr. Barry Perlman. Defendant has no knowledge which of the RAC members actually were responsible for collecting data or investigating the facts concerning the Andrus and other Hudson Valley facilities. Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Defendant has no knowledge if such persons were responsible for collecting data or investigating the facts concerning the Andrus and other Hudson Valley facilities.

Interrogatory No. 2:

Identify any staff or members of the RAC who spoke with any representative of the Andrus.

Response to Interrogatory No. 2:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Furthermore, Defendant has located documents which indicate that

a member or members of the RAC did meet with representatives of the Andrus. See, e.g., the document Bates numbered AND 1350. Other than such documents, Defendant has no other knowledge regarding the particulars of such meeting.

Interrogatory No. 3:

Identify the dates of the conversations responsive to Interrogatory No. 2 above.

Response to Interrogatory No. 3:

This interrogatory is not permitted under Local Rule 33.3.

Interrogatory No. 4:

Identify all staff or members of the RAC responsible for drafting the section of the RAC Report containing the recommendations concerning the Andrus and other Hudson Valley facilities.

Response to Interrogatory No. 4:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Defendant is not aware which staff or members of the RAC were responsible for drafting the section of the RAC Report containing the recommendations concerning the Andrus and other Hudson Valley facilities.

Interrogatory No. 5:

Identify all staff or members of the RAC responsible for reviewing or analyzing the data concerning the Andrus discussed in the RAC Report.

Response to Interrogatory No. 5:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at

New York Medical College. Defendant is not aware which staff or members of the RAC were responsible for reviewing or analyzing the data concerning the Andrus discussed in the RAC Report.

Interrogatory No. 6:

Identify all staff or members of the RAC responsible for reviewing or analyzing any other data collected by or submitted to the RAC by or on behalf of or otherwise concerning the Andrus or other Hudson Valley facility.

Response to Interrogatory No. 6:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Defendant is not aware which staff or members of the RAC were responsible for reviewing or analyzing any other data collected by or submitted to the RAC by or on behalf of or otherwise concerning the Andrus or other Hudson Valley facility. Defendant objects to this interrogatory pursuant to executive deliberative privilege.

Interrogatory No. 7:

Identify all staff or members of the RAC responsible for performing any comparative analyses between the Andrus and any other Hudson Valley facility.

Response to Interrogatory No. 7:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Defendant objects to this interrogatory pursuant to executive deliberative privilege.

Interrogatory No. 8:

Identify all staff or members of the RAC who communicated with any staff or members of the Berger Commission concerning the Andrus or any other Hudson Valley facility.

Response to Interrogatory No. 8:

Defendant is not aware of any RAC "staff" although, upon information and belief, RAC member Dr. Robert W. Amler received assistance from Denise Tahara and Annette Choolfian at New York Medical College. Defendant objects to this interrogatory pursuant to executive deliberative privilege.

Interrogatory No. 9:

Identify the dates of the conversations responsive to Interrogatory No. 8.

Response to Interrogatory No. 9:

This interrogatory is not permitted under Local Rule 33.3.

Berger Commission Witnesses

Interrogatory No. 10:

Identify all staff or members of the Berger Commission responsible for collecting data or investigating the facts concerning the Andrus and any other Hudson Valley facility.

Response to Interrogatory No. 10:

The Berger Commission staff included David Sandman, Mark Ustin, Allison Silvers, Barbara McRedmond, Vincent Fitts, Hiton Marcus, Janette Simms and possibly others. Defendant is not aware which staff or members of the Commission were responsible for

collecting data or investigating the facts concerning the Andrus and any other Hudson Valley facility.

Interrogatory No. 11:

Identify any staff or members of the Berger Commission who spoke with any representative of the Andrus.

Response to Interrogatory No. 11:

Defendant is not aware which, if any, staff or members of the Berger Commission spoke with any representative of the Andrus. Allison Silvers attended a meeting of the RAC with Betsy Biddle.

Interrogatory No. 12:

Identify the dates of the conversations responsive to Interrogatory No. 11 above.

Response to Interrogatory No. 12:

This interrogatory is not permitted under Local Rule 33.3.

Interrogatory No. 13:

Identify all staff or members of the Berger Commission responsible for drafting the section of the Commission Report containing the recommendations concerning the Andrus and any other Hudson Valley facility.

Response to Interrogatory No. 13:

Defendant is not aware which staff or members of the Berger Commission were responsible for drafting the section of the Commission Report containing the recommendations concerning the Andrus and any other Hudson Valley facility.

Interrogatory No. 14:

Identify all staff or members of the Berger Commission responsible for reviewing or analyzing the data concerning the Andrus discussed in the Commission Report.

Response to Interrogatory No. 14:

Defendant is not aware which staff or members of the Berger Commission were responsible for reviewing or analyzing the data concerning the Andrus discussed in the Commission Report.

Interrogatory No. 15:

Identify all staff or members of the Berger Commission responsible for reviewing or analyzing any other data collected by or submitted to the Berger Commission by or on behalf of, or otherwise concerning the Andrus or any other Hudson Valley facility.

Response to Interrogatory No. 15:

Defendant is not aware which staff or members of the Berger Commission were responsible for reviewing or analyzing any other data collected by or submitted to the Berger Commission by or on behalf of, or otherwise concerning the Andrus or any other Hudson Valley facility.

Interrogatory No. 16:

Identify all staff or members of the Berger Commission who communicated with any staff or members of the RAC concerning the Andrus or any other Hudson Valley facility.

Response to Interrogatory No. 16:

Defendant is not aware which staff or members of the Berger Commission communicated with any staff or members of the RAC concerning the Andrus or any other Hudson Valley

facility. Defendant objects to provision of this information, if he becomes aware of this information, pursuant to executive deliberative privilege.

Interrogatory No. 17:

Identify the dates of the conversations responsive to Interrogatory No. 16.

Response to Interrogatory No. 17:

This interrogatory is not permitted under Local Rule 33.3.

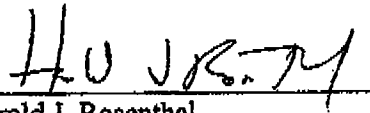
Interrogatory No. 18:

Identify all staff or members of the Berger Commission responsible for performing any comparative analyses between the Andrus and any other Hudson Valley facility.

Response to Interrogatory No. 18:

Defendant is not aware which staff or members of the Berger Commission were responsible for performing any comparative analyses between the Andrus and any other Hudson Valley facility.

As To Interrogatory Responses:


Harold J. Rosenthal

Sworn to before me this
2nd day of July, 2007



Notary Public

SETH M. ABRAMS
Notary Public, State of New York
No. 02AB4683818
Qualified in Albany County
Commission Expires July 31, 20 09

As To Objections:

Dated: New York, New York
July 2, 2007

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendant

By: 

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Andrus Mem. v Daines, 07-CV-3432 (CLB) (KNF)
DEFENDANT'S PRIVILEGE LOG

No.	Date	Author(s)	Recipient(s)	Subject Matter	W or R ¹	Priv	Bates No
1	Unk.	Commission on Healthcare Facilities		Draft Hudson Valley RAC Nursing Facility Options and Considerations	W	D	AND 0071 / 0081
2	06/29/06	Staff Nursing Facility		Staff Nursing Facility Recommendations	W	D	AND 0320 / 0321
3	Unk.	David Sandman, Ph.D. Exec. Director		Draft Commission on Health Care Facilities in the 21 st Century Rightsizing Analytic Framework Rule Development	W	D	AND 0326 / 0341
4	Unk.			Draft Long-Term Care Recommendations	W	D	AND 0355 / 0389

¹ Column "W or R" refers to documents that are either withheld or redacted. The column "Priv" refers to the privilege asserted. The only privilege asserted, "D", refers to the deliberative/executive privilege.

5	Unk.			Long-Term Care Reform Opportunities Analysis and Additional Considerations	W	D	AND 0513 / 0515
6	Unk.			Draft chart listing facilities and various information	W	D	AND 0516 / 0535
7	1/4/05			Draft Long - Term Care Reform Opportunities Analysis and Additional Considerations "Users Guide "	W	D	AND 0576 / 0578
8	Unk.	David Sandman, Ph.D	Dan Heim	Draft of 3/17/06 ltr.	W	D	AND 0620 / And 0622
9	3/6/06	Allison P. Silvers	David R. Sandman Ph. D. Mark R. Ustin	E-mail regarding testimony	W	D	AND 0644
10	4/7			Handwritten notes	W	D	AND 1120 / 1124
11	1/4/05			Draft Long-Term Care Reform Opportunities Analysis and Additional Considerations "Users Guide"	W	D	AND 1127 / 1130

12	Unk.			Draft of a portion of "A Plan to Stabilize and Strengthen New York's Health Care System"	W	D	AND 1197 / 1226
13	Unk.			Draft of a portion of "A Plan to Stabilize and Strengthen New York's Health Care System"	W	D	AND 1228 / 1319
14	Unk.			Draft of a portion of "A Plan to Stabilize and Strengthen New York's Health Care System"	W	D	AND 1320 / 1349

EXHIBIT B



Commission on Health Care Facilities in the 21st Century

90 Church Street, 13th Floor, New York, NY 10007 • Phone (212) 417-5544 • Fax (212) 417-4893

Stephen Berger, Chairman • David Sandman, Ph.D., Executive Director

March 17, 2006

Dan Heim

Vice President for Public Policy

New York Association of Homes and Services for the Aging

150 State Street, Suite 301

Albany, NY 12207

Dear Mr. Heim:

Dan

Thank you for your thoughtful and detailed comments of March 9 on the Commission's long-term care opportunities analysis and review framework. NYAHSA has been an early and strong supporter of the Commission. We appreciate the constructive spirit of engagement your organization and its members have exhibited and look forward to a continued partnership to strengthen our state's health care system.

While I will respond to your specific comments, I also want to take this opportunity to provide a broader perspective on the Commission's work. Most importantly, I must stress that the work of the Commission is more than a "numbers game;" its recommendations will be not determined solely by a numeric formula. As you know, it is the role of the Regional Advisory Committees (RACs) to gather local "qualitative" information for the very purpose of understanding what data may omit or misrepresent. In addition, the RACs are involved in numerous provider discussions, in which the full nature of specific facilities will be revealed.

With that perspective in mind, we have repeatedly stated that the long-term care opportunities analysis is a starting point, not an end point or final determination. Facilities in highlighted counties are not necessarily "in danger," nor are facilities in un-highlighted counties necessarily "safe" because of this analysis. It is only one means to help RAC members and Commissioners understand where non-institutional resources may be increased through reductions in excess institutional capacity. In fact, some RACs are reviewing counties beyond those identified in the analysis.

We agree with many of your comments on the LTC opportunities analysis, and have revised it to reflect:

- a lower cut-off for occupancy-down to 94%-to acknowledge the vacancy factor inherent in growing short-term care. As you know, this is considerably less strict than the occupancy rates required in the bed need methodology as well as lower than the rate needed to qualify for bed hold payments.

AND 0615



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- 2004 occupancy figures and a more recent count of approved beds.
- A revised assumption that 19% of PA/PBs could be served in an alternative setting such as ALP.

The revised analysis will be shared with Commission and RAC members. I have also attached an appendix table illustrating the changes that results from these revisions.

With respect to the rightsizing framework:

- While we acknowledge the limitations in the data that you mention, we feel that the process mentioned above—first-pass statistical analysis, plus local commentary and insights, plus private discussions with providers—provides appropriate opportunities for the limitations of the data to be revealed, and for many alternative metrics to be introduced.
- Note that the Medicaid-eligible proportion of admissions is calculated using both Medicaid-only and Medicare-Medicaid admissions, so that any relative differences in short-term Medicare admissions would not affect this data. And while most institutions do have a very high proportion of Medicaid-eligible admissions, the metric does indeed help identify those that are significantly above or below their regional mean. We feel that this is the best data available to determine whether a facility serves low-income individuals.
- In terms of Quality of Care, we did look at substantiated complaints to confirm facilities with poor CMS quality measures.
- In terms of Utilization, we are seeking the most current and correct information on occupancy, and would welcome your assistance in this. In the meantime, for specific facilities with poor 2003 occupancy, we have reviewed their 2004 number to determine if the situation improved.
- For the commission's purposes, we are concerned with Nursing Home bed utilization. While it may very well be the case that an under-utilized nursing facility is affiliated with other successful long-term care services, it still speaks to the fact that the nursing home beds are under-utilized.
- We agree that financial performance will in fact correlate significantly with whether or not a facility has re-based. Nevertheless, sustained losses of several years—whether "fair" or not—calls into question ongoing viability. If a financially-troubled facility is asked into discussions, the conversation will welcome information on non-operating income and other program profits.



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- While we understand your comments on economic impact, the point for consideration is whether the loss of those nursing home beds would be an employment hardship for the local community. FTEs/county and county unemployment are the best available data to address this.

As acknowledged above, your letter makes some excellent points and we have revised our approach accordingly. However, we should not "lose the forest for the trees" and I encourage NYAHSA and the Task Force to provide input beyond technical data issues. For example, you briefly mention some barriers to deploying HCBS services. I invite you to elaborate on those barriers, identify any additional barriers, and most importantly, supply your recommendations to overcome those barriers.

Other questions you may wish to address could include:

- What would encourage more voluntary rightsizing and resource shifts in the provider community?
- What were the issues in the 2005 demonstration that discouraged more providers from applying?
- Assuming there were no moratoriums on day center or caps on ALP beds, what specific geographic areas should these services be expanded in?
- Under the auspices of the Commission's recently promulgated anti-trust protection, what opportunities for merger or service coordination might be pursued?

In closing, thank you again for your thoughtful input into this process. The Commission's work is enriched by the leadership and embrace of change exemplified by NYAHSA.

Sincerely,

A handwritten signature in dark ink, appearing to read "David", written over a horizontal line.

David Sandman, Ph.D.
Executive Director

Cc: Stephen Berger, Chairman
Mark Ustin
Allison Silvers

Attachment



Commission on Health Care Facilities in the 21st Century

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Stephen Berger, Chairman • David Sandman, Ph.D., Executive Director

Appendix

Long-Term Care Opportunities Analysis

Revised County Highlights

Original County Highlights	Revised County Highlights
Broome	Broome
Cayuga	Cayuga
Chemung	Chemung
Chenango	Chenango
Cortland	Cortland
Herkimer	Herkimer
Jefferson	Jefferson
Lewis	Lewis
Livingston	Livingston
Madison	Madison
Monroe	Monroe
Oneida	Oneida
Onondaga	Onondaga
Ontario	Ontario
Oswego	Oswego
St. Lawrence	St. Lawrence
Schuyler	Schuyler
Seneca	Seneca
Steuben	Steuben
Tioga	Tioga
Tompkins	Tompkins
Wayne	Wayne
Yates	Yates
Delaware	Delaware
Dutchess	Dutchess
Orange	Orange
Putnam	Putnam
Rockland	Rockland
Sullivan	Sullivan
Ulster	Ulster
Westchester	Westchester
Nassau	Nassau
Suffolk	Suffolk
Albany	Albany
Clinton	Clinton



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Columbia	Columbia
Essex	Essex
Franklin	Franklin
Fulton	Fulton
Greene	Greene
Hamilton	Hamilton
Montgomery	Montgomery
Otsego	Otsego
Rensselaer	Rensselaer
Saratoga	Saratoga
Schenectady	Schenectady
Schoharie	Schoharie
Warren	Warren
Washington	Washington
Bronx	Bronx
Kings	Kings
New York	New York
Queens	Queens
Richmond	Richmond
Allegany	Allegany
Cattaraugus	Cattaraugus
Chautauqua	Chautauqua
Erie	Erie
Genesee	Genesee
Niagara	Niagara
Orleans	Orleans
Wyoming	Wyoming